

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAR-NIQUE SIMON, No. C-09-5859 TEH (PR)

Petitioner,

ORDER AFTER REMAND; APPOINTING  
COUNSEL FOR EVIDENTIARY HEARING

v.

DOMINGO URIBE, Warden,

(Doc. #18)

Respondent.

Petitioner Mar-nique Simon, a state prisoner, filed a pro  
se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254  
challenging a criminal judgment from Alameda County Superior Court.  
Doc. #1. Respondent moved to dismiss the Petition as untimely.  
Doc. #5. On March 9, 2011, the Court granted Respondent's motion to  
dismiss, finding that Petitioner was not entitled to equitable  
tolling. Doc. #10. Petitioner appealed and, on June 21, 2013, the  
Ninth Circuit issued a memorandum decision reversing and remanding  
on the issue of equitable tolling. Doc. #18. The mandate issued on  
July 15, 2013. Doc. #19.

Citing Bills v. Clark, 628 F.3d 1092, 1096-101, (9th Cir.

1 2010), the Ninth Circuit held that Petitioner "was entitled to an  
2 evidentiary hearing because he made a 'non-frivolous showing that he  
3 had a severe mental impairment during the filing period.'" Doc. #18  
4 at 2. The Ninth Circuit ordered that, on remand, this Court "shall  
5 order any discovery, expansion of the record, or evidentiary hearing  
6 necessary to determine whether Simon is entitled to equitable  
7 tolling based on a mental impairment." Id. at 3.

8 In light of the foregoing, the Court orders as follows:

9 1. Petitioner is entitled to an evidentiary hearing in  
10 this Court to determine if he is entitled to equitable tolling based  
11 on a mental impairment.

12 2. Petitioner is entitled to the appointment of counsel  
13 under 18 U.S.C. § 3006A(g) for representation at the evidentiary  
14 hearing. See United States v. Duarte-Higareda, 68 F.3d 369, 370  
15 (9th Cir. 1995) (holding Rule 8(c) of the Rules Governing Section  
16 2254 Cases makes the appointment of counsel mandatory pursuant to 18  
17 U.S.C. § 3006A(g) whenever an evidentiary hearing is required in a  
18 habeas action).

19 3. Petitioner shall be referred to the Federal Public  
20 Defender's Office for its prompt selection of a qualified attorney  
21 to represent Petitioner at the evidentiary hearing.

22 4. The Clerk of the Court shall provide a copy of this  
23 Order to the Federal Public Defender's Office in San Francisco, as  
24 well as to the parties. Upon being notified by the Federal Public  
25 Defender's Office that an attorney has been located to represent  
26 Petitioner, the Court will appoint that attorney as counsel for  
27 Petitioner in this matter until further Order of the Court.

1           5. Once counsel appears, the Court will set a schedule  
2 for supplemental briefing on the scope of the evidentiary hearing.  
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4           IT IS SO ORDERED.

5           DATED

6           08/19/2013

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THELTON E. HENDERSON  
United States District Judge